

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

NATIONAL BOARD OF MEDICAL
EXAMINERS *et al.*,

Plaintiffs,

V.

Civil Action No. 09-1043-JDB

OPTIMA UNIVERSITY LLC *et al.*,

Defendants.

DECLARATION OF GERARD F. DILLON, PH.D.

I, Gerard F. Dillon, Ph.D., hereby state as follows:

1. My name is Gerard F. Dillon. I am more than twenty-one (21) years of age and, unless otherwise noted, I have personal knowledge of the facts stated herein.

2. I am employed by the National Board of Medical Examiners (“NBME”) as Vice President, United States Medical Licensing Examination (“USMLE”). The NBME is a non-profit organization whose mission is to protect the health of the public by providing a common, consistent, state-of-the-art system of assessment of health professionals.

3. The Federation of State Medical Boards (“Federation”) is a non-profit corporation that represents the 70 state medical boards of the United States and its territories. The Federation’s mission is to improve the quality, safety and integrity of health care through development and promotion of high standards for physician licensure and practice. Together the NBME and the Federation have established and developed the

USMLE, a standardized examination which is relied upon by all state medical licensing authorities to help assess the qualifications of MD's seeking medical licenses.

4. In my position at NBME, I am responsible for implementing and coordinating USMLE policies, developing the design of the USMLE program, overseeing the composition and activities of test committees, developing a research agenda, serving as a liaison with external groups, and providing overall operational supervision of the USMLE examination program.

5. The information provided in this declaration is based upon information known to me personally or provided to me by individuals who are also employed by NBME.

6. The USMLE examination is designed to assess whether an individual has the minimal knowledge and skills deemed necessary for safe and effective patient care. It is administered each year to tens of thousands of examinees at locations around the world.

7. There are three parts of the USMLE, known as "Steps." Step 1 assesses whether an applicant can understand and apply important concepts of the science basic to the practice of medicine. Step 2 assesses whether the applicant can apply medical knowledge, skills, and understanding of the clinical science essential for provision of patient care under supervision. Step 2 consists of a Clinical Knowledge (CK) component (a multiple choice examination) and a Clinical Skills (CS) component (a simulation of doctor-patient encounters). Step 3 assesses whether the applicant can apply medical knowledge and understanding of biomedical and clinical science essential for the unsupervised practice of medicine. Passage of all three Steps is accepted by U.S. medical

licensing authorities to satisfy the examination requirements for MD's seeking a license to practice.

8. In order to assist examinees who are preparing to take the Steps, the NBME and Federation publish practice test questions on the USMLE website. These practice questions are USMLE questions that are no longer used in the examination.

9. The NBME takes various actions to protect the reliability and validity of scores that are achieved on USMLE examinations. For example, the USMLE's "Bulletin of Information" expressly notifies prospective examinees that USMLE exam materials are confidential and copyrighted, and may not be reproduced or distributed. In relevant part, the Bulletin provides:

**OWNERSHIP AND COPYRIGHT OF
EXAMINATION MATERIALS**

The examination materials used in the USMLE are copyrighted. If you reproduce and/or distribute any examination materials, by any means, including memorizing or reconstructing them, without explicit written permission, you are in violation of the rights of the owners.... [E]very legal means available to protect USMLE copyrighted materials and secure redress against those who violate copyright law may be pursued.

Examinees also agree to comply with "Rules of Conduct" that include agreements not to remove materials in any form, or to reproduce or disseminate information about the exam. The Rules of Conduct are set forth in the USMLE Bulletin of Information and include the following Rules:

You will not remove materials in any form (written, printed, recorded, or any other type) from the test center.

All examination materials remain the property of the USMLE parent organizations, and you will maintain the confidentiality of the materials, including the multiple-choice items You will not reproduce or attempt to

reproduce examination materials through memorization or other means. Also, you will not provide information relating to examination content that may give or attempt to give unfair advantage to individuals who may be taking the examination. This includes [making] postings regarding examination content and/or answers on the Internet.

The Bulletin is found on the USMLE website and available to all examinees well in advance of their test date.

10. When registrants apply to take any USMLE Step examination, they are required to affirm that they have read and will comply with all rules and requirements set forth in the Bulletin of Information. In addition, when they take their exams, each examinee sees a computer screen reminding them of the rules.

11. The USMLE is an integral component of each state's effort to ensure that only competent and qualified individuals are licensed to practice medicine. All states rely on the USMLE in their efforts to identify those who are qualified to enter the profession and those who are not qualified to become physicians. The NBME and Federation take seriously their roles in the assessment of candidates for medical licensure. Maintaining the integrity of the testing process is a critical part of their efforts to protect the public safety and welfare.

12. The USMLE is a "secure" examination. Its questions are intended to be kept confidential before and after the examination is administered. Post-exam confidentiality is critical. It is common practice with standardized tests to reuse a certain number of questions from each examination on subsequent examinations in order to "equate" examination scores from one test form to another, and occasionally for other reasons.

13. Because the USMLE is a secure examination, USMLE test questions and answers are not intended to be disclosed except during actual test administration or under such other limited circumstances as the NBME and Federation have authorized.

14. In 1999, the USMLE was converted from a paper-and-pencil based examination to a computer-based testing (CBT) format. This change released examinees from the restriction of fixed testing dates, enabled rapid reporting of scores and facilitated administration of Step 1 and Step 2 CK of the USMLE at more examination sites. Today, Step 1 and Step 2 CK are continuously administered through a third-party delivery vendor at proctored sites around the world. Step 3 is administered at facilities in the United States and its territories. Step 2 CS, which requires the examinee to interact with individuals trained to portray various medical conditions, is administered at five regional Clinical Skills Evaluation Centers in the United States.

15. The development of USMLE examination questions is a very time consuming and expensive process, involving many subject matter experts, multiple committee meetings, and an extensive amount of staff support.

16. To help protect the confidentiality and security of the USMLE, as well as the NBME's and Federation's substantial investment in the development of USMLE questions and examinations, USMLE test materials are registered with the United States Copyright Office. It is my understanding that they are registered pursuant to the Copyright Office's secure test registration procedures, which afford special treatment to secure tests in order to protect the confidentiality of the examination questions.

17. NBME periodically registers batches of test questions with the Copyright Office which constitute the pool of questions from which questions are drawn to make up a given examinee's test form.

18. As part of a routine investigation of unusual score reports, NBME became aware in June 2007 of an unusual response pattern involving an examinee who took Step 1 of the USMLE at a testing center in Bucharest, Romania and who had failed the examination with an unusually low score. The examinee in question, Marius-Antoni Ciurez ("Mr. Ciurez"), chose answer choice "A" for 82% of his multiple choice questions.

19. The test centers where students take the USMLE are videotaped for security reasons. NBME reviewed the videotape of the examination room where Mr. Ciurez tested. The individual we identified as Mr. Ciurez was seen with his hand frequently up at the monitor. He appeared to be holding something. We believe that Mr. Ciurez was scanning or photographing the questions and answer choices on the screen.

20. Mr. Ciurez has never passed any Step examination. According to NBME's records, Mr. Ciurez has taken Step 1 of the USMLE on three occasions, achieving very low scores. He has taken Step 2 CK of the USMLE on three occasions, also achieving very low scores. Mr. Ciurez's scores and/or answer patterns suggest that Mr. Ciurez was NOT trying to pass the examination.

21. When applying to take the USMLE, Mr. Ciurez identified his medical school as a medical school in Romania. A number of other individuals who have taken Step 1 and Step 2 CK of the USMLE at test centers in Romania and Hungary reported themselves as being students or graduates of the same Romanian medical school. Many

of these individuals also achieved very low test scores, and it appears that these individuals likewise were NOT trying to pass their exams.

22. NBME reviewed videotapes of the examination rooms where some of these other individuals tested. These individuals were also seen attempting to scan or photograph the questions and answer choices on the screen. At no time were any of the individuals who were videotaped copying the exam screens authorized to videotape, copy, reproduce, publish, distribute copies of, disclose to third persons, display or prepare derivative works based on all or any portion of any USMLE examinations.

23. NBME subsequently became aware of a test preparation course named "Optima-USMLE" ("Optima"). The Optima website identified Eihab Suliman ("Suliman") as Optima's president.

24. Suliman has applied to take the USMLE twelve (12) times. He has actually taken two USMLE exams, Step 1 in 2004, which he failed, and Step 2 CS in 2005, which he passed. Each time he had access to secure USMLE questions and answers. Suliman's applications stated that he attended a medical school in Romania, and he provided addresses in Romania and in New Jersey as his residential address at that time.

25. The Romania and New Jersey addresses listed by Mr. Suliman in his testing registration materials are identical to addresses listed by Mr. Ciurez in his testing registration materials.

26. As part of its continuing investigation of Optima and Mr. Suliman, NBME arranged for an individual ("X") to register for and attend the Optima USMLE test preparation program. It is my understanding that Optima was operating at that time from

a location in Totowa, New Jersey. X's findings were subsequently reported to NBME.

Some of these findings, as reported to NBME, are as follow:

a. X met a person who identified himself as Dr. Eihab Suliman, president and founder of Optima.

b. During X's time at Optima, X reviewed examination preparation materials provided by Optima, which were accessible on an Optima computer. X confirmed that at least 50 questions or parts of questions were identical, partially identical, or very similar to original, copyrighted, secure USMLE questions from the copyrighted pool of Step 1 examination questions which NBME had previously provided to X for use in the investigation.

c. While attending the Optima review course, X was repeatedly admonished not to copy the Optima materials or to remove them from the Optima site.

d. X was not given paper copies of any of Optima's course materials.

27. The Optima web site is located at www.optimauniversity.com. The

"terms and conditions" for the course contained on the web site state:

The Content provided in lectures, our books, our DVD's, multimedia kinds or tools or in the web site is copyrighted. You are only permitted to view the Content for your personal and non-commercial use only. You are not permitted to copy, modify, reproduce, disclose or distribute any of the copyrighted Content in whole or in part. Your Optima-USMLE account username and password may not be shared- and may not be shared between classmates, friends or co-workers. Any unauthorized use of the Content is a violation of Optima University rights protected by USA Federal laws and could subject you and others who are involved to criminal and civil penalties and will result in the immediate termination of your account without any refunds.

28. At no time was Suliman or Optima authorized to videotape, copy, reproduce, publish, distribute copies of, disclose to third persons, display or prepare derivative works based on all or any portion of any USMLE examinations. Likewise, none of the other individuals referenced above, who tested in Romania and Hungary, were authorized to copy or distribute any portion of any USMLE examination.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2011.


Gerard F. Dillon, Ph.D.